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IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-753

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LOUIS PEICK,

Petitioners,

v.

JOHN DANIEL,

Respondent.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF AMERICAN BANKERS ASSOCIATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF IN SUPPORT OF PETITIONS

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The American Bankers Association respectfully moves, pursuant to Rule 42 of the Rules of this Court, for leave to file

the attached brief as *amicus curiae* in support of the petitions for a writ of certiorari. Petitioners have consented to the filing of such brief; respondent has not.

The decision below held for the first time that under the Federal securities laws an employee's right to receive retirement benefits from a pension plan to which he does not contribute is a "security" which the employee "purchases" through becoming and remaining employed.

Interest of the American Bankers Association

The membership of the American Bankers Association consists of approximately 13,375 banks and trust companies—88% of the commercial banks in the United States. Banks in the Association hold or manage nearly $90 billion of assets in more than 120,000 employee benefit plans. Association members also maintain employee benefit plans for their own one million employees.

Neither the parties to this action nor the *amici curiae* below have presented the views of professional fiduciaries about application of the securities laws to pension plans, although banks manage over 65% of all private noninsured pension funds in the United States[1] (including most of the assets in the Local 705 Pension Trust Fund involved here[2]).

The parties typically involved in a pension plan are (1) the employees covered by the plan, who may be represented by a union; (2) their employer; (3) the individuals who administer the plan; and (4) the fiduciary that holds and manages the plan's assets. Only some of these persons are parties to this action. Plaintiff is an employee with a particular grievance. Defendants are the employee's union, in its capacity as plan sponsor, and the labor-management Board of Trustees that administered the plan.[3] The general views of employers and unions were presented in the Court of Appeals by two *amici curiae*, the ERISA Regulations Industry Committee and the National Coordinating Committee for Multiemployer Plans. In addition, two regulatory agencies, the Department of Labor and the Securities and Exchange Commission, presented their (conflicting) positions. But no one has spoken for the fiduciaries of the nation's pension funds or for the beneficiaries of such funds on the momentous issues that they confront because of the decision below.

[1] 1975 Survey of Private Noninsured Pension Funds, 35 SEC Statistical Bulletin 552, 553 (Nov. 1976).

[2] Affidavit of A. S. Hansen, Inc., sworn to April 13, 1976, at 14, reproduced as Exhibit 1 after page 184a of the Appendix of the Appellants in the Court of Appeals; see *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1240 n.35 (7th Cir. 1977).

The American Bankers Association is uniquely situated to assist this Court in determining whether to review the decision of the Court of Appeals. The Association's members are professional fiduciaries, who are among those most seriously affected by the decision below. They are expert in the financial and administrative aspects of pension fund management and are intimately acquainted with the problems presented by the extensive existing regulation of pension plans. The American Bankers Association participated in the congressional hearings and other deliberations that led to enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Association is also conversant with earlier laws relating to pension plans, including the Internal Revenue Code, the Wage-Hour Law and the Welfare and Pension Plans Disclosure Act of 1958 (the predecessor of ERISA, now largely repealed).

The attached brief in support of the petitions for a writ of certiorari discusses the following points, which demonstrate the importance of reviewing the decision below:

[3] The Local 705 Pension Trust Fund was administered by a Board of Trustees composed equally of union and employer representatives, pursuant to section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. § 186(c)(5) (1970). These individuals should be distinguished from the professional bank trustees that managed approximately $54 million of the $97 million of assets held in trust for the Local 705 pension plan. Affidavit of A. S. Hansen, Inc., sworn to April 13, 1976, at 14, reproduced as Exhibit 1 after page 184a of the Appendix of the Appellants in the Court of Appeals; see *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1240 n.35 (7th Cir. 1977).

—Regulation of pension plans under the securities laws is impractical. The resulting administrative burden, expense and risk of unlimited liability will result in the abandonment or curtailment of many existing plans and will discourage the establishment of new plans.

—The decision below has created great uncertainty among those responsible for employee pension plans and their assets.

—Compliance by pension plans with the securities laws as interpreted by the Court of Appeals is inappropriate in view of the comprehensive regulatory system already in effect under ERISA.

—Application of the securities laws to pension plans distorts the purpose of those laws and conflicts with economic reality.

The American Bankers Association seeks leave to present these considerations, which have not previously been presented in this action from the perspective of the fiduciaries that manage pension funds.

WHEREFORE, it is respectfully requested that the Court grant the American Bankers Association leave to file the attached brief as *amicus curiae* in support of the petitions for a writ of certiorari.

Dated: December 8, 1977

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BRIEF OF THE AMERICAN BANKERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONS

The American Bankers Association submits this brief as *amicus curiae* to urge that this Court grant the petitions for a writ of certiorari to review the unprecedented decision of the Court of Appeals, which held that for purposes of the Federal

securities laws an employee's right to receive retirement benefits under a pension plan is a "security" which the employee "purchases" through becoming and remaining employed, even though he himself makes no contributions and is automatically covered by the plan. That holding is a significant departure from the most recent decisions of this Court. Because the decision has important and immediate consequences for pension funds, their participants and their managers, it has generated widespread uncertainty and confusion in an already troubled field of great concern to millions of people.

The interest of the American Bankers Association as *amicus curiae* is set forth in the foregoing motion for leave to file this brief.

ARGUMENT

I.

Application of the securities laws to pension plans would adversely affect the pension benefits of millions of employees.

The decision below imposes upon pension plans, as if they were the issuers of stocks or bonds, and upon employers, as if they were underwriters, the vague and inappropriate requirements of the "antifraud" provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.[1] Those provisions make it unlawful to use fraudulent schemes in selling securities or to make false or misleading statements or omissions in connection with the sale of securities. The lower court deemed the rights of an employee under a pension plan to be a "security" for this purpose, and his employment to be a "purchase" of that security, even though he was automatically covered by the plan upon employment and made no contribution of his own funds.

[1] Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a) (1970); Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b) (1970).

Compliance with the antifraud provisions of the Federal securities laws would subject pension plans to new and complex requirements over and above the broad disclosure scheme already imposed by the Employee Retirement Income Security Act of 1974 ("ERISA").

A primary purpose of ERISA was to require disclosure to employees of all pertinent information about employee benefit plans and to provide appropriate sanctions to ensure such disclosure.[2] ERISA was needed legislation, supported by the American Bankers Association. One of its less salutary results, however, has been a heavily increased burden of paperwork and governmental regulation, onerous enough and costly enough to bring about the abandonment of many plans and the curtailment of others.[3] A survey by the Staff of the House Committee on Small Business of 1,661 businesses that reported termination of pension plans during the period from June 1976 through April 1977 showed that ERISA had a "substantial" effect on the decision to terminate in more than two out of three cases. Over 90% of the businesses surveyed had 50 or fewer employees.[4] How many other cases went unreported is unknown.

As shown by this experience under ERISA, the additional layer of regulation brought to bear on pension plans by the decision of the Court of Appeals in this case will predictably accelerate elimination of benefit improvements and abandonment of private pension plans. Yet the resultant loss of benefits would be unjustified, because the additional regulation is unnecessary.

The Court of Appeals hypothesized that "the anti-fraud provisions do not establish an affirmative disclosure system

[2] ERISA § 2(b), 29 U.S.C. § 1001(b) (Supp. V 1975). ERISA was also designed to set minimum standards for the terms of pension plans and to establish standards of conduct for plan fiduciaries.

[3] See, *e.g.*, Bankers Trust Company, ERISA Related Changes in Corporate Pension Plans 1 (1976); Remarks of Representative Dent, 174 Daily Lab. Rep. (BNA) at A-7 (Sept. 7, 1976).

[4] Staff of House Comm. on Small Business, 95th Cong., 1st Sess., ERISA Questionnaire Results (Comm. Print 1977).

requiring the filing of documents"[5] and optimistically predicted that "[t]here should be no undue burden caused by the type of disclosure the anti-fraud provisions would encourage. . . ."[6] However, the holding below is specifically premised on the finding that the antifraud provisions require disclosure that differs in both form and substance from what the court termed the "plethora of information"[7] required to be disclosed under ERISA.

If, as the lower court held, a pension plan is really an investment contract and "resembles a mutual fund,"[8] it may reasonably be thought that in offering each employee an opportunity to "invest" in such a contract the issuer (*i.e.*, the plan) and the underwriter (*i.e.*, the employer) should furnish each prospect (*i.e.*, the employee) with the kind of information that would be needed by a prospective investor in a mutual fund. If the Securities and Exchange Commission's prospectus requirements for mutual funds are a guide, the necessary disclosures would include, among other things, detailed information about the investment policies of the pension plan, including specific information with respect to borrowing or lending money; investing in real estate or other specialized forms of investment; concentration of investments in particular industries or areas; the percentage of assets which may be invested in the securities of any one issuer; the proportion of assets which may be invested in each type of security proposed to be acquired; and the rate of portfolio turnover.[9] Also required would be descriptions of any material legal proceedings to which the plan was a party.[10]

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[5] *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1247 (7th Cir. 1977).
[6] *Id.* at 1250.
[7] *Id.* at 1248.
[8] *Id.* at 1236.
[9] See Securities and Exchange Commission Forms S-5, Item 1(a), and N-8b-1, Items 4 and 5.
[10] See Securities and Exchange Commission Forms S-5, Item 1(a), and N-8B-1, Item 9.

As these policies and facts changed from time to time, it would presumably be necessary to disseminate corrected and updated information to all of the same people who had received it originally.

But even this information would apparently be inadequate in connection with the "purchase" of a "security" that was also a right to a pension. The Court of Appeals specifically said the antifraud provisions require that a prospective participant in a pension plan be given information about "the actuarial probability . . . that a member actually will receive pension benefits"[11]—that is, the odds on his getting a pension. Such information would be impossible to provide as to each individual employee, since actuarial probabilities are based upon statistical assumptions about group mortality, average rate of personnel turnover, projected salary levels and future interest rates. The generalized information supporting those assumptions could be given but would necessarily consist of a mass of data and formulae comprehensible only to actuaries.

The Court of Appeals believed that most pension plans would not be burdened by the disclosure requirements of the securities laws, because interests in corporate pension plans "maintained" by banks are specifically exempted from the *registration* requirements of the Securities Act of 1933[12] and most pension plans use bank trustees. However, this causes great concern to bank trustees. Their duties as fiduciaries require the most careful attention to legal requirements in the administration of pension funds. As a practical matter, irrespective of exemption from registration, a prudent fiduciary seeking to assure compliance with the antifraud provisions would have to make disclosures that would be the practical equivalent of compliance with the prospectus requirements of the securities laws. To do less, or to make no written record of

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[11] *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1229 (7th Cir. 1977).
[12] Securities Act of 1933, § 3(a)(2), 15 U.S.C. § 77c(a)(2) (1970).

what had been disclosed, would be to risk liability for damages in an action under the antifraud provisions.

Yet ERISA, specifically designed to afford employees all *relevant* information about pension plans in which they may participate, does not require that prospective participants be given information of the kind described above. Its disclosure requirements focus instead on such matters as how an employee may qualify to participate in the plan, when he will become eligible for benefits, how benefits are determined, what events may lead to loss of benefits and how he may enforce his rights if denied. On the other hand, ERISA does require that much technical and investment information be included in periodic reports to the Government (where it is, of course, available to other interested parties). This approach under ERISA obviously reflects a congressional judgment that information of the sort deemed important to investors under the securities laws (much less the kind of actuarial gambler's-odds the Court of Appeals would require) has limited utility to prospective plan participants and is certainly not essential to their understanding of their rights.

These examples of differences between the kind of information that is useful for plan participants and thus required by ERISA and the kind of information that is appropriate for investors gives only a hint of the difficulties engendered by the decision below. The Court of Appeals did not attempt to catalogue all of the additional disclosure requirements imposed by the antifraud provisions. Instead, the burden and risk of anticipating such requirements has been placed squarely upon those responsible for employee benefit plans.

The potential impact of the decision below is illustrated by the broad construction the Securities and Exchange Commission is already putting on it. For example, the Commission interprets the decision as compelling advance disclosure of all facts bearing on the question whether a pension fund is being

managed solely "for the benefit of the beneficiaries".[13] Under this expansive interpretation (which is questionable even if the decision of the Court of Appeals in the present case is accepted) the antifraud provisions would require a fiduciary to disclose to employees, in advance and in detail, exactly what investments the trustee intends to make for the trust fund and who the other parties to all transactions have been or may be. The difficulty of such disclosure is apparent.

The difficulty is compounded by the Court of Appeals' findings that the "primary distribution" of interests in a pension plan takes place when the pension plan is first established,[14] and that an employee makes a "further acquisition of interests in the pension fund" each time he "decides to retain his job,"[15] each time he performs services that result in payments into the fund and each time union members vote to accept or ratify collective bargaining agreements affecting the pension plan. Accordingly, the decision of the Court of Appeals would require disclosure to *prospective* employees of all material facts and circumstances that might affect the amount and the ultimate payment of their pensions. As noted above, under familiar securities law concepts the documents setting forth this information would have to be updated and distributed repeatedly. The additional burden of these requirements is obvious.

It is easy, of course, to say that disclosure can only be helpful, and the more information the better. But this takes no account of the cost, in time and money, of the disclosure process, in relation to the value of the information to those who

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[13] See Complaint, *SEC v. Shenker*, No. 77-1787, Count IV (D.D.C., filed Oct. 7, 1977). The idea espoused by the Commission that actions under its rules are an appropriate means for arbitrating conflicts between employers and employees under pension plans is contrary to views previously expressed by this Court about the intended reach of the securities laws. See *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477-80 (1977); *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 858-60 (1975).

[14] *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1246 n.46 (7th Cir. 1977).

[15] *Id.* at 1243.

receive it. It is safe to predict that the additional work by executives, lawyers, actuaries and accountants that would be required for compliance with the securities laws as interpreted by the Court of Appeals would materially increase the administrative expenses of employers maintaining plans. Management fees would also have to be raised to cover the additional responsibilities of fiduciaries. The increased costs could not be absorbed by banks, whose profit margins on trust business are generally low or nonexistent.[16]

Perhaps the most drastic consequence of the lower court's decision is the risk of open-ended liability created by retroactive application of the securities laws to pension plans whose sponsors and fund managers never imagined that they might be subject to those laws. Although the Court of Appeals did not specifically address the measure of plaintiff's damages, plaintiff seeks payment of the entire amount of the pension benefit to which he claims to be entitled. Thus, in addition to potential liability for damages caused by current disclosure that may be found deficient in the future, pension plans face potential liability for benefits claimed by employees who are no longer covered by pension plans but who complain about past deficiencies in disclosure.

It is doubtful that bank fiduciaries will be willing to bear the risk of such liabilities unless provision can be made for insurance or adequate reserves, either of which would increase the charges against (and decrease the benefits from) pension plans. Moreover, it is unlikely that insurance will be available, since private insurance carriers have proven unwilling to cover the risks of liability under ERISA at any reasonable cost.

The increased burden, cost and risk of administering pension plans if they are held subject to the antifraud provisions of the securities laws will contribute to the abandonment of many plans and the curtailment of benefits from others, thereby

[16] See, *e.g.*, Federal Reserve Bank, 1976 Functional Cost Analysis 16.

harming the employees whom the Court of Appeals has strained to protect. Before such unfortunate results occur, this Court should grant review of the decision below.

II.

The prospect that pension plans may be subject to the securities laws has created great confusion and uncertainty among employers, plan trustees and investment managers.

The disclosure requirements of ERISA, though complicated and pervasive, are based on specific statutory provisions, which were enacted after extensive legislative hearings and close analysis of the needs of employees and the burdens imposed on employers, plan trustees and investment managers.

By contrast, the decision of the Court of Appeals by a single stroke subjects the highly technical area of pension plans to an equally technical body of nonstatutory authority developed in the context of a completely different industry. The decision is without precedent; it adopts *in toto* a position taken by the Securities and Exchange Commission, "[a]pparently for the first time ever," in its brief as *amicus curiae* in the court below.[17] The decision is also at odds with decisions by district courts in other circuits, which had expressly declined to follow the decision of the district court in this case.[18]

Small wonder, then, that the decision of the Court of Appeals has created confusion and uncertainty. Persons responsible for pension plans no longer have any assurance that compliance with ERISA and other statutes known to be applicable will fulfill their legal obligations, and they cannot judge whether the rule in the Seventh Circuit will prevail

[17] *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1251 (7th Cir. 1977) (Tone, J., concurring).

[18] *Robinson v. UMW Health & Retirement Funds*, 435 F. Supp. 245 (D.D.C. 1977); *Wiens v. International Bhd. of Teamsters*, [1977] Fed. Sec. L. Rep. (CCH) ¶ 96,005 (C.D. Cal. Mar. 28, 1977); *Hurn v. Retirement Fund Trust of the Plumbing, Heating & Piping Indus.*, 424 F. Supp. 80 (C.D. Cal. 1976).

elsewhere. No guidance is available for resolution of conflicts between ERISA and the antifraud provisions. The lower court's statement that "the district court can fashion relief to avoid a conflict with ERISA if plaintiff should prevail on the merits"[19] gives little comfort to plan trustees and administrators, who must make arrangements in advance to comply with Federal law. The ill defined scope of the antifraud provisions of the securities laws as they might be applied to pension plans merely aggravates the situation.

Review by this Court is seriously needed to settle the important questions raised by the decision below.

III.

Regulation of pension plans as issuers of securities is unnecessary for the protection of employees.

ERISA has created a comprehensive system for controlling the terms of private pension plans, regulating the financing of benefits and requiring comprehensible disclosure to employees. The disclosure requirements create a duty on the part of plan administrators to provide each employee upon entry into the plan with a clear description of his plan benefits, the eligibility requirements and the circumstances under which benefits may be denied. After becoming participants, employees must receive yearly reports of the financial experience of the plan.

Department of Labor regulations supplement these statutory requirements by adding to the information regarded as necessary for employees to understand and enforce their rights. The regulations also require the filing of detailed data about plan terms and financial conditions (including, for plans with more than 100 participants, certified financial statements and actuarial evaluations). Each employee must be informed of his right to obtain copies of documents on file.

[19] *Daniel v. International Bhd. of Teamsters,* 561 F.2d 1223, 1249 (7th Cir. 1977).

The disclosure requirements of ERISA are matched by broad public and private enforcement provisions. The Internal Revenue Service exercises continuing tax sanctions, and the Department of Labor has direct enforcement powers. In addition, ERISA gives plan participants private rights of action to obtain injunctive or other equitable relief to redress violations of the statute, including the wrongful denial of benefits. Employees must be informed of their rights to sue.

The ERISA system is augmented by other forms of regulation. As one example, banks, which serve as fiduciaries of most pension funds, are subject not only to ERISA's express rules on the conduct of plan fiduciaries, but also to extensive regulation of their trust administration practices by Federal and state supervisory agencies, providing an additional level of protection for the beneficiaries of bank-managed trust funds.

The Securities and Exchange Commission, as *amicus curiae* below, attached great importance to the fact that under the securities laws the required information must be given to an employee before he becomes a plan participant or even before he is hired, whereas ERISA materials are given shortly after an employee becomes a plan participant. Actually, this time difference is of no significance. An employee covered by a compulsory plan has no power to change its terms, and to say he might decline to become employed, or might quit, is unrealistic. In view of the extensive regulation to which pension plans and their managers are already subject, and the private rights of action under ERISA, there is no need to create a new cause of action for plan participants under the antifraud provisions of the securities laws.

The acts complained of by plaintiff antedated ERISA, but he is not without other remedies if he has been unjustly denied pension benefits. His own complaint included a cause of action under the National Labor Relations Act, which the district court upheld against a motion to dismiss. Aggrieved pension plan participants have also gained relief in other cases through

application of common law principles of misrepresentation and fiduciary duty.[20]

The decision below does not create any new legal standards needed to protect the pension rights of employees (although it does impose a multitude of unnecessary burdens). ERISA already requires disclosure, fiduciary responsibility and fairness. The decision below merely creates a new cause of action, thereby issuing a general invitation to employees to use the courts to assert claims under the Federal securities laws if they can find no grounds for action under the statutory and administrative rules to which private pension plans are already subject.[21]

IV.

Regulation of pension rights as "securities" is an inappropriate distortion of the purpose and regulatory scheme of the securities laws.

The securities laws were designed to protect the interests of investors in the country's capital markets from "the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946). The term "securities" is broadly defined to prevent evasion of regulation through artful

[20] See, *e.g.*, *Maness v. Williams*, 513 F.2d 1264 (8th Cir. 1975); *Roark v. Boyle*, 439 F.2d 497 (D.C. Cir. 1970); *Gediman v. Anheuser Busch, Inc.*, 299 F.2d 537 (2d Cir. 1962).

[21] This Court has emphasized that rights of action under the securities laws should not be "implied" unless there is an actual "*necessity* for supplemental private remedies without which congressional protection of shareholders would be defeated." *Piper v. Chris-Craft Indus., Inc.*, 430 U.S. 1, 25 (1977) (emphasis in original). Likewise, this Court has held that implied remedies under SEC Rule 10b-5 are inappropriate in cases where they "would overlap and quite possibly interfere with" other bodies of directly applicable law. *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 479 (1977).

terminology or legal structuring designed to mask the substance of an investment relationship in an obscure form, but the focus of regulation is on "the sale of securities," as so defined, "to raise capital for profit-making purposes. . . ." *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 849 (1975). In classifying an employee's rights under a noncontributory pension plan as a security, the decision below distorts this focus because of a fundamental misapprehension about what a pension plan really is.

The core of any pension plan is the promise of an employer that an employee will receive retirement payments. A trust is established as a means of funding in advance (and safeguarding from the risks of the employer's business) the employer's obligation to pay compensation to its employees after retirement.[22] Since the employer continues to make contributions until the trust assets are actuarially adequate to pay the employees' pensions, making up along the way any investment losses incurred by the trust (and getting the benefit of any investment gains in excess of the actuarial prediction), the trust is actually an investment by the employer, not by the covered employees.[23]

To say that an employee has an "interest" in the trust merely recognizes the importance of the employer's undertaking to fulfill its pension obligations. The purpose of laws regulating the financing of pension obligations, illustrated by ERISA, is to assure that the employer's agreement to pay

[22] The fact that plaintiff was a member of a plan established by his union, rather than by his employer alone, may have obscured this point in the mind of the Court of Appeals, since the decision below avoids any consideration of "possible obligations of employers under the 1933 and 1934 Acts with regard to pension plans." *Daniel v. International Bhd. of Teamsters*, 561 F.2d 1223, 1250 n.61 (7th Cir. 1977). This statement is inconsistent with the lower court's emphasis on the purported significance of pension rights in an employee's decision to become employed and illustrates the distortion of economic reality required to bring pension plans within the ambit of the securities laws.

[23] There is no doubt that the securities laws apply to the investment by the trust of its own funds.

compensation to a former employee during his retirement is not illusory and that the funding of obligations under that agreement is adequate.

The thrust of the securities laws, by contrast, is toward disclosure to potential investors of information pertinent to a voluntary investment decision. This approach is neither appropriate nor necessary to ensure the proper discharge of an employer's undertaking to pay pensions. As this Court has said more than once, the extension of existing Federal regulation to new areas is a matter best left to Congress.

CONCLUSION

It is respectfully urged, on behalf of professional pension fiduciaries, that this Court grant the petitions for a writ of certiorari.

Dated: December 8, 1977

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